

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS LANGER,) Case No. 07cv0560-J (BLM)
)
Plaintiff,) **NOTICE AND ORDER FOR EARLY**
) **NEUTRAL EVALUATION CONFERENCE**
v.)
)
RAINBOW OAKS, INC., A)
California corporation; KEVIN)
D. BITHER; CINDY L. BITHER;)
RANDY L LAPIERRE; WENDY L.)
LAPIERRE, and DOES 1 through)
100, inclusive,)
)
Defendants.)

IT IS HEREBY ORDERED that an Early Neutral Evaluation (ENE) of your case will be held on May 16, 2007 at 1:30 p.m. in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, **located at 940 Front Street, Suite 5140, San Diego, California, 92101.**

The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be

1 informal, off the record, privileged, and confidential. Counsel for any
2 non-English speaking party is responsible for arranging for the
3 appearance of an interpreter at the conference.

4 2. **Personal Appearance of Parties Required:** All parties,
5 adjusters for insured defendants, and other representatives of a party
6 having full and complete authority to enter into a binding settlement,
7 and the principal attorneys responsible for the litigation, must be
8 present **in person** and legally and factually prepared to discuss
9 settlement of the case. Counsel appearing without their clients
10 (whether or not counsel has been given settlement authority) will be
11 cause for immediate imposition of sanctions and may also result in the
12 immediate termination of the conference.

13 Unless there are extraordinary circumstances, persons required to
14 attend the conference pursuant to this Order shall not be excused from
15 personal attendance. **Requests for excuse from attendance for**
16 **extraordinary circumstances shall be made in writing at least seventy-**
17 **two (72) hours prior to the conference.** Failure to appear at the ENE
18 conference will be grounds for sanctions.

19 3. **Full Settlement Authority Required:** In addition to counsel
20 who will try the case, a party or party representative with full
21 settlement authority¹ must be present for the conference. In the case

22
23 ¹ "Full settlement authority" means that the individuals at the settlement
24 conference must be authorized to explore settlement options fully and to agree at that
25 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
26 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
27 discretion and authority" to change the settlement position of a party. Pitman v.
28 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
a person with unlimited settlement authority to attend the conference contemplates that
the person's view of the case may be altered during the face to face conference. Id.
at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's

1 of a corporate entity, an authorized representative of the corporation
2 who is not retained outside counsel must be present and must have
3 discretionary authority to commit the company to pay an amount up to the
4 amount of the Plaintiff's prayer (excluding punitive damages prayers).
5 The purpose of this requirement is to have representatives present who
6 can settle the case during the course of the conference without
7 consulting a superior. Counsel for a government entity may be excused
8 from this requirement so long as the government attorney who attends the
9 ENE conference (1) has primary responsibility for handling the case, and
10 (2) may negotiate settlement offers which the attorney is willing to
11 recommend to the government official having ultimate settlement
12 authority.

13 4. **Confidential ENE Statements Optional:** The parties may, but
14 are not required to, submit prior to the ENE confidential statements no
15 more than five (5) pages in length directly to the chambers of the
16 Honorable Barbara L. Major. **These confidential statements shall not be**
17 **filed or served on opposing counsel.**

18 5. **New Parties Must be Notified by Plaintiff's Counsel:**
19 Plaintiff's counsel shall give notice of the ENE to parties responding
20 to the complaint after the date of this notice.

21 6. **Requests to Continue an ENE Conference:** Local Rule 16.1(c)
22 requires that an ENE take place within forty-five (45) days of the
23 filing of the first answer. Requests to continue ENEs are rarely
24 granted. However, the Court will consider formal, written, *ex parte*
25 requests to continue an ENE conference when extraordinary circumstances
26 exist that make a continuance appropriate. In and of itself, having to
27 travel a long distance to appear in person is not "extraordinary."

28 Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 Absent extraordinary circumstances, requests for continuances will not
2 be considered unless submitted in writing no less than seven (7) days
3 prior to the scheduled conference.

4 Based upon the Court's familiarity with cases brought pursuant to
5 the Americans with Disabilities Act, and in the interest of promoting
6 the just, efficient, and economical determination of this action, the
7 Court issues the following orders:

8 1. All discovery shall be stayed in this case until after the
9 Rule 26(f) conference;

10 2. **Twenty-one (21) days** prior to the ENE, Plaintiff's counsel
11 shall lodge with Magistrate Judge Major's chambers, and serve on
12 opposing counsel, a statement no more than two (2) pages in length,
13 including the following information:

14 a. An itemized list of the specific issues on the subject
15 premises which are the basis of the claimed violations under the
16 Americans with Disabilities Act. A recitation of regulations, by
17 number, will not satisfy this requirement. The claimed violations must
18 be specifically described.

19 b. A statement of the amount and category of damages claimed
20 by Plaintiff in this action.

21 c. The amount claimed for attorneys' fees and costs; and

22 d. The Plaintiff's demand for settlement of the case in its
23 entirety.

24 3. **At least fourteen (14) days** prior to the ENE, lead counsel
25 responsible for the case and any unrepresented parties, along with
26 property managers of commercial locations, shall meet and confer in
27 person at the subject premises regarding settlement of:

28 a. The premises violations alleged; and

1 b. Damages, costs, and attorneys' fees claims.
2 Plaintiff's counsel shall be responsible for making arrangements for the
3 conference.

4 4. **At least seven (7) days** prior to the ENE, counsel shall lodge
5 with Magistrate Judge Major's chambers a joint statement advising the
6 Court of the status of settlement negotiations and setting forth all
7 issues in dispute, including property issues, Plaintiff's alleged
8 damages, and the claim for attorneys' fees and costs, along with a
9 description of any settlement demands and/or offers exchanged.

10 5. Plaintiff's counsel shall be prepared to present to the Court
11 for *in camera* review at the ENE documentation supporting the amount of
12 attorneys' fees and costs claimed.

13 Questions regarding this case may be directed to the Magistrate
14 Judge's law clerk at (619) 557-7372.

15
16 DATED: April 23, 2007

17 

18 BARBARA L. MAJOR
19 United States Magistrate Judge

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21
22 COPY TO:

23 HONORABLE NAPOLEON A. JONES, JR.
24 U.S. DISTRICT JUDGE

25 ALL COUNSEL
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27
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NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on Form 1A available in the Clerk's Office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgements of U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.